

*George M*

**FILED**

JUN 10 1991

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
V.  
  
ASARCO, INC.,  
BLUE TEE CORPORATION,  
CHILDRESS ROYALTY COMPANY,  
GOLD FIELDS MINING CORPORATION,  
NL INDUSTRIES, INC.,  
ST. JOE MINERALS CORP.,  
  
Defendants

**91 C 263 B**  
Civil Action No.

CONSENT DECREE

WHEREAS, The United States of America ("Plaintiff" or "United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") has filed a complaint against Asarco, Inc., Blue Tee Corporation, Childress Royalty Company, Gold Fields Mining Corporation, NL Industries, Inc., and St. Joe Minerals Corp. ("Defendants") pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 42 U.S.C. § 9607(a) ("CERCLA") seeking recovery of costs incurred by the United States in responding to the release or threat of release of hazardous substances at or in connection with the site identified by EPA in its June 6, 1984 Record of



Decision ("ROD") as the Tar Creek Site, Ottawa County, Oklahoma (the "Site");

WHEREAS, the United States has incurred response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site;

WHEREAS, the United States asserts that the alleged release of hazardous substances into the environment at and from the Site may have caused damage, including property damage;

WHEREAS, the Defendants desire to settle their alleged liabilities for response costs incurred by the United States with respect to the Site, thereby avoiding costly and complex litigation among the parties;

WHEREAS, the United States and Defendants have each stipulated and agreed to the making and entry of this Consent Decree ("Decree") without any adjudication of any issue of fact or law and without any admission of liability or fault or waiver of any defense (except as to jurisdiction) as to any allegation or matter arising out of the pleadings of any party or otherwise;

WHEREAS, the United States and the Defendants agree that settlement of this case without further litigation and without the admission or adjudication of any issue of fact or law or waiver of any defense (except as to jurisdiction) is the most appropriate means of resolving this action and is in the public interest.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

## I. JURISDICTION

The Court has jurisdiction over the subject matter of this action and the parties pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345. The parties agree not to contest the jurisdiction of the Court to enter or enforce this Decree.

## II. BACKGROUND AND SITE HISTORY

A. The Tar Creek Site is a former lead and zinc mining area covering approximately forty (40) square miles in northeast Oklahoma. The Site is referred to historically as the Picher Mining Field portion of the Tri-State Mining Area. It was extensively mined from the late 1800s through the early 1960s. The deposits of lead and zinc ore occurred in a shallow water-bearing stratum known as the Boone Formation. After cessation of mining and dewatering operations, the mines gradually filled with water as the aquifer recharged the mine spaces. After periods of heavy rainfall, acidic effluent containing lead, cadmium and zinc began to discharge from the mines to the surface in the Tar Creek drainage basin.

B. The EPA evaluated the Tar Creek Site for inclusion on the CERCLA National Priorities List ("NPL"). The Site was listed on the NPL in 1982. EPA and the State of Oklahoma, through a cooperative agreement, conducted a remedial investigation ("RI") to characterize the nature and extent of contamination at the Site. The RI was followed by a feasibility study ("FS") in which various alternative cleanup remedies were

evaluated. EPA asserts that, among other things, the RI/FS identified certain open shafts, test holes and subsidence areas as the principal source of discharges to surface waters in the Tar Creek drainage basin and, in addition, the RI/FS also identified certain wells and bore holes at the Tar Creek Site as sources of potential interconnection between the Boone Formation and the Roubidoux aquifer, a deep drinking water source beneath the Site. On June 6, 1984, the Administrator of the EPA signed a Record of Decision selecting a cleanup remedy for the Site. EPA asserts that under the ROD : (1) remedial action was to be undertaken to divert contaminated mine drainage from entering Tar Creek at certain mine water discharge points; (2) dikes and associated diversionary channels were to be constructed to divert Tar Creek around major discharge points; and (3) sixty-six (66) wells and bore holes were to be plugged to prevent possible migration of contaminated mine water to the Roubidoux aquifer. Thereafter, the EPA proceeded to implement the remedy selected in the ROD and further incurred emergency response costs in connection with the Picher municipal well.

### III. PARTIES BOUND

This Decree shall apply to, be binding upon and inure to the benefit of each of the Defendants, their directors, officers, employees, agents, successors and assigns and the United States. Each signatory to this Decree represents that he or she is fully authorized to enter into the terms and conditions

of this Decree and to legally bind the party represented by him or her.

#### IV. PAYMENT

A. The Defendants shall pay to the Hazardous Substance Superfund the sum of One Million Two Hundred Seventy Three Thousand and no/100 Dollars (\$1,273,000.00) within thirty (30) days of entry of this Decree. Such payment does not constitute a penalty, fine or monetary sanction.

B. Interest shall accrue on any amount due, owing and unpaid more than thirty (30) days after entry of this decree, at the rate provided for under 42 U.S.C. § 9607(a).

C. By March 14, 1990, Defendants will have deposited monies in the total amount of One Million Two Hundred Seventy Three Thousand and no/100 (\$1,273,000.00) with an escrow agent. Defendants shall instruct the escrow agent to tender such sum to the United States in accordance with the requirements of this Decree. Defendants shall provide the United States with the escrow agent's certification of receipt of such sum.

D. The amount due under this Section, plus any accrued interest, shall be paid by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the Site name and the civil action number of this case and shall be sent to:

EPA Superfund, Region VI--Tar Creek Site  
P.O. Box 360582M  
Pittsburgh, Pennsylvania 15251

A copy of the check and the letter enclosing the check shall be submitted to the United States as follows:

Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
Washington, D.C. 20530  
D.J. No. 90-11-2-330

and to EPA as follows:

Regional Counsel--Tar Creek Site  
United States Environmental Protection Agency  
1445 Ross Avenue  
Dallas, Texas 75202

V. COVENANT NOT TO SUE

A. In consideration of payment in full of the amount due under the terms of this Decree, and except as specifically provided in this Section, the United States covenants not to sue or to take administrative action against Defendants for any and all civil liability to the United States for causes of action arising or costs which are incurred under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973, in connection with the RI/FS, the ROD and the emergency response involving the Picher municipal well.

B. Notwithstanding any other provision of this Decree, the United States reserves the right to institute judicial proceedings or to issue administrative orders seeking to compel Defendants (1) to perform additional response actions at the Site or (2) to reimburse the United States for additional costs of response if,

(i) conditions at the Site, previously unknown to the United States, are discovered after the entry of this Decree, or

(ii) information is received, in whole or in part, after the entry of this Decree,

and the EPA Administrator or his delegate finds, based on these previously unknown conditions or this information together with other relevant information, that additional response action is necessary to protect human health and the environment from past or future releases at the Site.

C. The covenant not to sue set forth above does not extend to any matters other than those expressly specified in this Section V. The United States reserves, and this consent decree is without prejudice to, all rights against Defendants with respect to all other matters, including without limitation:

- (1) claims based on a failure by Defendants to meet a requirement of this Decree;
- (2) liability for damages for injury to, destruction of, or loss of natural resources; and
- (3) criminal liability.

D. Defendants covenant not to sue the United States, its departments, officers and representatives, and agree not to assert any claims or causes of action against the Hazardous Substance Superfund, for any and all claims arising from or relating to the response activities at or related to the Site which have been resolved in this Decree.

VI. RESERVATION OF RIGHTS

A. Nothing in this Decree is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any of the Defendants for:

- (a) Failure to make the payment required by Section IV of this Decree; or
- (b) Any matters not expressly included in the covenant not to sue in Section V.

B. Nothing in this Decree is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not bound by this Decree.

C. The United States and the Defendants agree that neither entry of this Decree nor any action undertaken by the Defendants in accordance with this Decree constitutes an admission or acknowledgement of any factual or legal allegations in the Complaint or in this Decree or of any liability, fault, or responsibility, or evidence of such, or an admission or acknowledgement of any violation of any law, rule, regulations, or ruling by any Defendant, nor shall this Decree or performance hereunder create any rights on behalf of any person not a party to this Decree.



D. Except as expressly provided herein, the Defendants reserve all rights (including any contribution rights), defenses, claims, demands, and causes of action which each of them may have with respect to any matter, action, event, claim, or proceeding relating to the Site, or otherwise, against any person.

E. Except as provided herein, nothing in this Decree shall limit the response authority of the United States under Sections 104 and 106 of CERCLA, 42 U.S.C. §§ 9604, 9606, or any other applicable law.

#### VII. CONTRIBUTION PROTECTION

With regard to claims for contribution against Defendants for matters addressed in this Decree, the Parties hereto agree that the Defendants have resolved their liability with respect to such matters and are entitled, as of the effective date of this Decree, to such protection from contribution actions or claims as provided in CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

#### VIII. CONTINUING JURISDICTION

The Court specifically retains jurisdiction over both the subject matter of and the parties to this action for the duration of this Decree for the purpose of issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify at the request of the parties, enforce, terminate, or reinstate, at the agreement of the parties, the terms of this Decree.

#### IX. SATISFACTION AND TERMINATION

The provisions of this Decree shall be deemed satisfied upon EPA's receipt of full payment of amount due pursuant to Section IV of this Decree. The Decree shall be terminated by motion of any party and order of the Court; provided however, that termination shall not affect any continuing obligations established hereunder which shall remain in effect, including without limitation, those provided under Section V (Covenant Not To Sue), VI (Reservation of Rights) and VII (Contribution Protection).

X. PUBLIC COMMENT

This Decree shall be subject to a thirty (30) day public comment period. The United States may withdraw its consent to this Decree if comments received disclose facts or considerations which indicate that this Decree is inappropriate, improper or inadequate.

XI MODIFICATION

No alterations or modifications of this Decree shall be made without the prior written approval of the United States and each Defendant or its representative and order of the Court.

XII. EFFECTIVE DATE

Subject to the public comment provisions of this Decree, the effective date of this Decree shall be the date of entry by this Court.

SIGNED this 10<sup>th</sup> day of June, 1990.

S/ THOMAS R. BRETT


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UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES:

DATED: \_\_\_\_\_

4/17/21

  
\_\_\_\_\_  
RICHARD B. STEWART (H27116)  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

DATED: \_\_\_\_\_

\_\_\_\_\_  
ROBERT E. LAYTON JR., P.E.  
Regional Administrator  
U. S. Environmental Protection  
Agency  
1445 Ross Avenue  
Dallas, Texas 75202-2733

U.S. v. Asarco, et al

FOR THE UNITED STATES:

DATED: \_\_\_\_\_

\_\_\_\_\_  
RICHARD B. STEWART  
Assistant Attorney General  
Environment and Natural  
Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

DATED: \_\_\_\_\_

*Robert E. Layton Jr.*  
\_\_\_\_\_  
ROBERT E. LAYTON JR., P.E.  
Regional Administrator  
U.S. Environmental Protection  
Agency  
1445 Ross Avenue  
Dallas, Texas 75202-2733

*Pamela Phillips*  
\_\_\_\_\_  
PAMELA PHILLIPS  
Associate Regional Counsel  
U.S. Environmental Protection  
Agency  
1445 Ross Avenue  
Dallas, Texas 75202-2733

FOR THE DEFENDANTS:

FOR THE DEFENDANTS:

ASARCO, INC.

T. C. Osborne

By: 

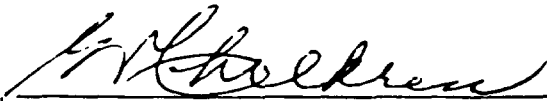
Its: EXEC. VICE PRESIDENT.

BLUE TEE CORPORATION

By: Conrad E. Goldstein

Its: Special Counsel

CHILDRESS ROYALTY COMPANY

By:   
G.V. Childress  
Its: Vice-President

GOLD FIELDS MINING CORPORATION

By: Cornel E. Goshulka  
Its: Special Counsel

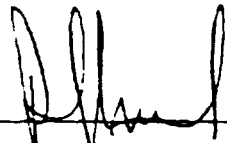


NL INDUSTRIES, INC.

By: Janet D. Smith  
Its: Associate General Counsel

TAF CREEK SITE CONSENT DECREE

ST. JOE MINERALS CORP.

By:  \_\_\_\_\_

Its: Vice President

7/3/91

**TAR CREEK SUPERFUND SITE, Ottawa County, Oklahoma:**

EPA received a cashier's check from the settling parties in the amount of \$1,273,000.00, on June 19, 1991. The money was paid in accordance with a Consent Decree filed in the United States District Court, Northern District of Oklahoma on June 10, 1991. The Tar Creek site is an abandoned lead and zinc mining area that was extensively mined from the late 1800s through the early 1960s. After the mine was closed shafts of the mine works began to flood releasing acidic mine waste. In 1984 EPA selected a remedy that consisted of diverting and diking a creek, and plugging abandoned wells. EPA Cleanup activities were completed in 1986. The Agency entered into costs recovery negotiations that concluded with six viable PRPs signing a Consent Decree. A seventh PRP (Eagle Picher) filed Chapter 11 bankruptcy on January 7, 1991. (Bolden)

**MARINE SHALE PROCESSOR, Morgan City, LA**

An initial team meeting was held on 7/1/91, to develop strategy to address the possible lead contamination that allegedly originated from the Marine Shale Processor facility. Team members consisted of representatives from CERCLA, RCRA, ERB, and ORC. Aggregate samples representative of the type of material located under a house, and in a roadbed, are being analyzed to determine if the lead content is bio-available, therefore, presenting an imminent and substantial endangerment. If an ISE exist, enforcement actions will be taken in an effort to facilitate a PRP cleanup. In the event the PRP declines to conduct the cleanup, EPA plans to initiate a Fund removal. (Bolden)

7-3-91